



March 21, 2018

Senator Paul Davis
Representative Danny Martin
State and Local Government Committee
c/o Legislative Information Office 100 State House Station Augusta, ME 04333

Re: Friends of Casco Bay Testimony in Opposition to LD 1853: **An Act To Ensure the Safe and Consistent Regulation of Pesticides throughout the State by Providing Exemptions to Municipal Ordinances That Regulate Pesticides**

Dear Senator Davis, Representative Martin, and Distinguished Members of the State and Local Government Committee:

Please accept this letter as the testimony of Friends of Casco Bay in opposition to **LD 1853: An Act To Ensure the Safe and Consistent Regulation of Pesticides throughout the State by Providing Exemptions to Municipal Ordinances That Regulate Pesticides**. Friends of Casco Bay is a marine stewardship organization formed over a quarter century ago to improve and protect the environmental health of Casco Bay. Our work involves education, advocacy, water quality monitoring, and collaborative partnerships.

A year ago we submitted testimony similar to today's testimony, opposing **LD 1505: An Act To Create Consistency in the Regulation of Pesticides¹**, a bill that would have eliminated municipal Home Rule to pass or implement pesticide-related ordinances. Although LD 1853 differs from LD 1505 by not explicitly referring to Home Rule, it implicitly guts it. LD 1853 provides that municipal pesticide ordinances cannot apply: (1) to commercial applicators and spray contracting firms or (2) to private applicators when the private applicators are producing agricultural or horticultural commodities. Horticulture means "the science and art of growing fruits, vegetables, flowers, or ornamental plants."² Horticulture is: "[t]hat branch of agriculture concerned with growing plants that are used by people for food, for medicinal purposes, and for aesthetic gratification."³

LD 1853 in essence removes the right of municipalities to pass pesticide ordinances for virtually any purpose. No ordinance can apply to commercial applicators. Nor can an ordinance apply to home applicators for basically any conceivable purpose, including weed-free lawns maintained for "aesthetic gratification." For this reason, **we respectfully request that this Committee unanimously recommend that LD 1853 ought not to pass, the same recommendation that it made for LD 1505.**

¹ See Attachment A: FOCB Testimony Oppose LD 1505.

² Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/horticulture>.

³ https://nifa.usda.gov/sites/default/files/resources/definition_of_specialty_crops.pdf.

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PESTICIDES IN CASCO BAY

Our previous testimony, attached as Exhibit A, details the sampling Friends of Casco Bay conducted to detect the presence or absence of pesticides in stormwater that flows into Casco Bay. In summary, over 8 years, our research identified 10 different pesticides at 14 locations around the Bay. None of the pesticides are listed as safe for use in marine environments. For example, these six toxic pesticides were detected:

2, 4-D: banned in five countries, this herbicide is toxic to aquatic invertebrates and may be linked to non-Hodgkins lymphoma in humans.

Clopyralid: this herbicide has been linked to birth defects in animals.

Diazinon: banned from being sold to U.S. consumers but still legal for use, this insecticide has a high aquatic toxicity and is linked to reproductive problems.

Dicamba: found in groundwater throughout the U.S., this herbicide is toxic to fish and zooplankton.

MCPP: along with 2, 4-D, this herbicide is in the same family of chemicals as Agent Orange and is highly toxic to bay shrimp.

Propiconazole: this fungicide is a possible carcinogen.

Consistent with our mission to improve and protect the environmental health of Casco Bay, we strongly believe these substances should not be discharged into our marine waters.

MAINE MUNICIPAL PESTICIDES ORDINANCES

The Maine Constitution grants Home Rule to municipalities.⁴ Home Rule allows municipalities to exercise any power or function that the Legislature confers upon them, and that is not denied expressly or by clear implication.⁵ With respect to pesticide ordinances, the Legislature requires a municipality to notify the Maine Board of Pesticide Control (BPC) when it intends to adopt an ordinance. In turn, the BPC must maintain a list of all municipal ordinances that specifically apply to pesticide storage, distribution or use.⁶ Municipalities adopt ordinances through considerable public process.⁷ For example, Friends of Casco Bay's Executive Director, Cathy Ramsdell, served for nearly a year on a task force that helped Portland shape its recently enacted pesticide ordinance.⁸

As a result of this very thoughtful process, 29 of Maine's nearly 500 municipalities have enacted ordinances that narrowly restrict pesticide use to meet local needs.⁹ It should be noted that none of these municipal ordinances out-right ban the use of pesticides. Here are some examples relevant to Casco Bay:

Brunswick prohibits use or storage of most pesticides other than for households and agriculture within the aquifer protection zone. The town also prohibits aerial applications other than public health applications performed under the auspices of the Town or State. Exceptions may be approved by Codes Enforcement Officer.

⁴ Maine Constitution, Art. VIII, pt. 2, § 1.

⁵ *CMP v. Town of Lebanon*, 571 A.2d 1189, 1192 (ME 1990); 30-A MRSA § 3001.

⁶ 22 MRSA § 1471-U.

⁷ See e.g. 30-A MRSA §§ 3001 et seq.

⁸ <https://www.cascobay.org/2018/02/06/protecting-bay-pesticides/>.

⁹ http://www.maine.gov/dacf/php/pesticides/public/municipal_ordinances.shtml.

Harpwell prohibits the use of the insect growth regulators (IGRs) diflubenzuron and tebufenozide and the aerial application of all IGRs and any insecticide whose product label indicates that it is harmful to aquatic invertebrates. The town also restricts the use of neonicotinoid insecticides.

New Gloucester requires application to be consistent with DCAF standards.

Portland's recently enacted ordinance will restrict the use of synthetic pesticides for all public and private turf, landscape, and outdoor pest management activities. The ordinance takes effect for City property on July 1, 2018 and for private property on January 1, 2019. There are provisions for emergency exemptions.

South Portland curtails the use of pesticides for turf, landscape and outdoor pest management.¹⁰

Research revealed no legal challenges to these ordinances. They stand as a proper application of Home Rule and as excellent examples of municipalities crafting more protective regulation than federal and state law to protect the health of local residents, natural resources, and environmental concerns. LD 1853 should not be allowed to eviscerate this proper and necessary exercise of Home Rule.

For the reasons set forth above and in our prior testimony, we reiterate our request that this Committee unanimously recommend that LD 1853 ought not to pass.

Respectfully,



Ivy L. Frignoca
Casco Baykeeper
Friends of Casco Bay

CC: Jennifer Hall, Clerk

¹⁰ *Id.*